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August 9, 2004

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AUG 09 2004

PUBLIC SERVICE  
COMMISSION

**via Hand Delivery**  
Ms. Beth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

**Re: Ballard Rural Telephone v. Jackson Purchase Rural Electric Cooperative Corporation, Case No. 2004-00036**

Dear Ms. O'Donnell:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") is one original and ten (10) copies of Ballard Rural Telephone Cooperative Corporation Inc.'s reply memorandum in support of its motion for summary judgment in the above-styled case.

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

*Holly C. Wallace (rk)*

Holly C. Wallace

HCW/rk  
Enclosure

cc: Mr. Harlon Parker (w/enclosure)  
John E. Selent, Esq. (w/o enclosure)

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AUG 03 2004

PUBLIC SERVICE  
COMMISSION

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

*In the Matter of:*

**BALLARD RURAL TELEPHONE )  
COOPERATIVE CORPORATION, INC. )  
Complainant )**

v. )

**JACKSON PURCHASE RURAL )  
ELECTRIC COOPERATIVE )  
CORPORATION )  
Defendant )**

Case No. 2004-00036

**RECEIVED**

AUG 09 2004

PUBLIC SERVICE  
COMMISSION

**REPLY IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, and in support of its motion for summary judgment states as follows.

**INTRODUCTION**

In its response to Ballard Rural's motion for summary judgment, the Defendant, Jackson Purchase Energy Corporation ("Jackson Purchase") attempts to create doubt about the issues, when there is no doubt about the law. The law forms the basis for this motion. The law provides the standard for providing summary judgment and, as a matter of law, summary judgment is appropriate when the non-moving party fails to present evidence of record to preclude the entry of summary judgment. *See Hoke v. Cullinan*, Ky., 914 S.W.2d 335 (1995) and *Welch v. American Publishing Company of Kentucky d/b/a The Daily News, et al.*, Ky., 3 S.W.3d 724, 729-30 (1999). Notwithstanding Jackson Purchase's assertions to the contrary, its response does not highlight issues of material fact, but the lack thereof. The issues identified by Jackson

Purchase are all issues of law which are appropriate for resolution by the Kentucky Public Service Commission (the “Commission”) on Ballard Rural’s motion for summary judgment.

### ARGUMENT

#### **I. THE COMMISSION HAS JURISDICTION OVER THIS MATTER AND SHOULD EXERCISE IT IN THIS CASE.**

Jackson Purchase contends that the Commission does not have jurisdiction over its proposed pole attachment rates. Jackson Purchase’s contention is without merit. The Commission should exercise its jurisdiction and grant Ballard Rural’s motion for summary judgment.

As a preliminary matter, the issue of whether the Commission has jurisdiction in the present case is a question of law, not a question of fact. Therefore, resolution of this issue is appropriate on a motion for summary judgment. Second, the Kentucky Court of Appeals has “already concluded that the Kentucky statutes authorized the Public Service Commission to exercise jurisdiction over pole attachment agreements with utilities in Kentucky. The Public Service Commission is the natural state agency to consider the interests of cable television subscribers *as well as the interests of the consumers of various utility services*. The Commission has accepted that task.” *Kentucky CATV Association v. Volz*, 675 S.W.2d 393, 396 (Ky. App. 1983) (emphasis added).

Nonetheless, Jackson Purchase argues that the Commission does not have jurisdiction because Jackson Purchase and Ballard Rural do not occupy a utility/customer relationship because both parties own poles. *See Jackson Purchase’s Response to Ballard Rural’s Motion for Summary Judgment* (“Response”), p. 6. Thus, according to Jackson Purchase, Ballard Rural could resolve this rate dispute by simply constructing more poles. *See Response*, p. 8. (“In our

present situation, the rate actually could be made largely irrelevant if the plaintiff would attempt to achieve parity with Jackson Purchase in regard to pole construction and ownership.”). The fact that Ballard Rural is also a provider of pole attachment services makes it no less of a customer. Ballard Rural receives pole attachment services from Jackson Purchase just as cable television ("CATV") companies do. The Commission should not lose sight of the fact that the impetus for this complaint was Jackson Purchase’s ultimatum to Ballard Rural that it either accept a 460 percent increase in rates or vacate 3,292 utility poles. Ballard Rural is at the mercy of Jackson Purchase's monopolistic power just as CATV operators were prior to Administrative Case No. 251. The Commission should not permit Jackson Purchase to abuse its monopoly power in this manner.

Moreover, just as the Commission found in Administrative Case No. 251, constructing more poles is not the answer. "CATV operators do not argue that they should be allowed to construct pole line systems of their own . . . and we see no reason why they should." *Order*, Administrative Case No. 251, August 12, 1982, p. 6. Constructing more poles would lead to duplicative facilities which would mar the countryside, anger Kentucky citizens, and unnecessarily increase customers’ rates. Rather than suggest that Ballard Rural construct more poles, Jackson Purchase should simply charge Ballard Rural its Cable Television Attachment Tariff ("CTAT") rates.

In a final attempt to persuade the Commission to refrain from exercising jurisdiction in this case, Jackson Purchase warns that the assertion of jurisdiction would lead to the revision of all currently-effective pole attachment agreements as well as the creation of a “new statewide bureaucracy” to regulate these agreements. *See Response*, p. 7. Nothing could be further from the truth. The Commission has already asserted jurisdiction over pole attachment rates, and

developed a methodology for calculating those rates. Thus, utility companies would simply need to file their currently-effective pole attachment agreements with the Commission, or include their pole attachment rates in their tariffs. Accordingly, pursuant to KRS 278.040, the Commission should exercise its jurisdiction over this rate-dispute case.

**II. JACKSON PURCHASE HAS NOT SATISFIED ITS BURDEN TO ESTABLISH THAT ITS PROPOSED POLE ATTACHMENT RATES ARE JUST AND REASONABLE.**

Pursuant to the Commission's orders and Kentucky case law, Jackson Purchase has the burden to demonstrate that its proposed rates are just, reasonable, and non-discriminatory. *See* KRS 278.030 and 278.170. Jackson Purchase has not satisfied this burden; therefore, the Commission should grant Ballard Rural's motion for summary judgment.

In its response to Ballard Rural's motion for summary judgment, Jackson Purchase states that it outlined its pole attachment rate justification in the pre-filed testimony of Richard Sherrill. Significantly, however, Jackson Purchase's response does not make a single reference to Mr. Sherrill's pre-filed testimony. Instead, Jackson Purchase relies on "Exhibit B" to Jackson Purchase's response to the first data request of Commission staff. Exhibit B is of no more support than Mr. Sherrill's testimony for the following reasons.

First, Exhibit B was filed in response to the Commission's first data request, not as an exhibit to Richard Sherrill's testimony. Therefore, it is not part of Jackson Purchase's pre-filed testimony. Nonetheless, even if the Commission were to consider Exhibit B as part of the evidence of record, Jackson Purchase still would have failed to satisfy its burden to establish the reasonableness of its proposed rates.

Jackson Purchase alleges that Exhibit B "outline[s] a complex formula outlining how its rates for pole attachments could be justified via appreciation for various inputs, and avoided

costs.” Response, pp. 2-3. Jackson Purchase offers no evidence, nor does it even allege, that this complex formula complies with the Commission-approved methodology for establishing fair, just and reasonable rates for service established in Administrative Case No. 251.

In Administrative Case No. 251, the Commission held that an electric utility should calculate its annual pole attachment rates by taking the weighted average of a pole multiplied by its bare pole factor, less a specified amount per ground, multiplied by its annual carrying charges, and finally multiplied by the appropriate usage factor applicable to the utility requesting the attachment. *See* Administrative Case No. 251, August 12, 1982, p. 14. In addition, the Commission identified a list of factors that should be considered when calculating the various components of the aforementioned formula such as the annual carrying charge. Jackson Purchase did not follow this formula.

Rather than utilize the Commission-approved methodology mentioned above, Jackson Purchase created its own formula which adds 95 percent of the "weighted average installed cost attributable to [Ballard Rural]" plus 50 percent of the "installed cost of pole ground which is accounted for separately in Jackson Purchase's books" multiplied by the annual system carrying charge. *See* Exhibit B to Jackson Purchase's Response to the Commission's Staff First Data Request. Moreover, Jackson Purchase did not identify how it calculated the components of its formula such as the annual system carrying charge and the "weighted average installed cost attributable to [Ballard Rural]." Thus, not only did Jackson Purchase disregard the methodology adopted by the Commission in Administrative Case No. 251, but, despite many opportunities to do so, it failed to explain: 1) why it chose another formula; 2) why its formula is as good or better than the Commission's formula; and 3) how it calculated the components of its formula.

"KRS 278.040 gives the PSC exclusive jurisdiction over the regulation of utility rates and service and provides that the PSC shall enforce the provisions of KRS Chapter 278." *Kentucky Public Service Commission v. Jackson County Rural Elec. Coop., Inc.*, 50 S.W.3d 764, 767 (Ky. App. 2000). "The utility has the burden of proof to show that the requested change of rate is just and reasonable." *See Order*, Case No. 2003-00284, October 16, 2003, p. 1. Jackson Purchase has failed to satisfy this burden. Accordingly, as a matter of law, the Commission should grant Ballard Rural's motion for summary judgment and enjoin Jackson Purchase from charging the proposed pole attachment rates.

**III. THE COMMISSION SHOULD ORDER JACKSON PURCHASE TO USE THE CTAT METHODOLOGY TO CALCULATE THE POLE ATTACHMENT RATES IT CHARGES BALLARD RURAL.**

In Administrative Case No. 251, the Commission approved a uniform methodology for utility companies to formulate fair and just pole attachment rates. Jackson Purchase has not demonstrated why its CTAT rate should not be applied to Ballard Rural. The Commission should order Jackson Purchase to utilize the commission-approved CTAT methodology when calculating the pole attachment rates it charges Ballard Rural.

Contrary to Jackson Purchase's assertions, Ballard Rural is not attempting to force jurisdiction of this matter upon the Commission, nor dictate how the Commission should resolve the matter. Ballard Rural is simply pointing out that the Commission has *already* asserted jurisdiction over pole attachment rates and identified an appropriate methodology for calculating those rates after undertaking an extensive and thorough study in Administrative Case No. 251. Jackson Purchase has identified no rational reason why the CTAT methodology should not be applied to Ballard Rural. Rather, Jackson Purchase simply argues that the CTAT methodology should not be applied because Ballard Rural owns utility poles, whereas most CATV companies

do not. This is a distinction without a meaning. Ballard Rural receives pole attachment services from Jackson Purchase just as CATV companies do. Utilities may not engage in “unreasonable rate discrimination between similarly situated customers.” *Order*, Case No. 97-107, October 12, 1998, p. 9. Moreover, “no utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage . . .” KRS 278.170.

The fact that Ballard Rural owns some utility poles is insufficient, as a matter of law, to justify the discriminatory rates and service that Ballard Rural receives from Jackson Purchase as compared to CATV companies. While CATV companies cannot be charged more than Jackson Purchase’s tariffed rates, Ballard Rural is left at the mercy of Jackson Purchase and faced with the lose-lose ultimatum of accepting a 460% increase in rates, or vacating 3,292 poles. The Commission should not permit Jackson Purchase to discriminate with regard to rates and services in this manner.

Ballard Rural recognizes, however, as Jackson Purchase points out in its Response, that its regular attachments occupy two feet of space as opposed to the one foot of space typically occupied by a CATV company. Therefore, with regard to attachments that occupy two feet of space, Ballard Rural would accept Jackson Purchase’s suggestion that Jackson Purchase charge Ballard Rural twice its currently-effective CTAT rate on file with the Commission.<sup>1</sup> Thus, for Ballard Rural's regular pole attachments occupying two feet of space, Ballard Rural would accept a pole attachment rate of \$4.54 ( $\$2.27 \times 2 = \$4.54$ ).

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<sup>1</sup> Jackson Purchase's currently-effective CTAT rates on file with the Commission range from \$1.75 for a three-party pole attachment to \$3.10 for a two-party anchor attachment. In the interest of clarity, the rate calculations in this section of the brief will be based on the CTAT two-party pole attachment rate of \$2.27. See Jackson Purchase's CTAT attached hereto as Exhibit 1.

With regard to attachments, such as drop lines<sup>2</sup>, that occupy only one foot of space, Jackson Purchase should charge Ballard Rural its currently-effective CTAT rate of \$2.27. These attachments occupy no more space than the typical CATV attachment; therefore there is no reason to charge Ballard Rural anything other than the CTAT rate on file with the Commission. Accordingly, with regard to pole attachments occupying one foot of space, Jackson Purchase should charge Ballard Rural a pole attachment rate of \$2.27.

The rates of \$2.27 and \$4.54, respectively, are fair, just, reasonable, and non-discriminatory as required by KRS 278.030 and 278.170. These rates are based upon the Commission-approved methodology pursuant to Administrative Case No. 251 and would prevent Jackson Purchase from unreasonably discriminating against Ballard Rural as compared to CATV companies. At the same time, the rates take into account the fact that some of Ballard Rural's pole attachments occupy twice the amount of space as those of CATV companies. Accordingly, the Commission should grant Ballard Rural's motion for summary judgment and order Jackson Purchase to charge Ballard Rural its currently-effective CTAT rate (\$2.27) for attachments occupying one foot of space (e.g. drop lines), and twice its currently-effective CTAT rate (\$4.54) for attachments occupying two feet of space.

**IV. THE COMMISSION SHOULD ORDER JACKSON PURCHASE TO REFUND \$122,723 TO BALLARD RURAL FOR FEES COLLECTED IN EXCESS OF FILED RATES.**

For the past fifty years, Jackson Purchase admittedly has collected pole attachment rates from Ballard Rural in excess of Jackson Purchase's tariffed rates. Jackson Purchase does not argue that these rates were filed with the Commission. Accordingly, the Commission should

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<sup>2</sup> A drop line runs between Ballard Rural's transmission line and a customer's residence. Drop lines are smaller than the typical telephone cable and occupy only one foot of space on a utility pole, as opposed to two. (See Exhibit 2, affidavit of Harlon Parker.)

order Jackson Purchase to refund \$122,723<sup>3</sup> to Ballard Rural plus interest accruing at the rate of six percent per annum.<sup>4</sup>

Contrary to Jackson Purchase's contention, Ballard Rural is not seeking damages from Jackson Purchase. Rather, Ballard Rural simply asserts the uncontested fact that Jackson Purchase has collected fees from Ballard Rural that were not filed with the Commission. "[E]ach utility *shall* file with the Commission . . . schedules showing all rates and conditions for services established by it and collected or enforced." KRS 278.160(1) (emphasis added). "No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that described in its filed schedules . . . ." KRS 278.160(2).

The Commission may require utilities to refund any charges that are collected and that are not prescribed in the utility's tariff. *See Order*, Case No. 99-210, July 11, 2000 p. 2. Thus, Ballard Rural does not seek damages from Jackson Purchase; rather, it respectfully requests that the Commission disgorge Jackson Purchase of fees it has collected from Ballard Rural in excess of its filed tariff. Pursuant to KRS 278.160(2), the Commission should order Jackson Purchase to refund \$122,723, plus interest at six percent annually, to Ballard Rural.<sup>5</sup>

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<sup>3</sup> The year-by-year calculation of those fees is attached as Exhibit 3 to this reply memorandum. Exhibit 3 reflects that Jackson Purchase billed Ballard Rural \$122,723 in pole attachment charges from 1970 through 2002. During this same time period, Ballard Rural billed Jackson Purchase \$5,462 for pole attachments. Therefore, the net amount billed by Jackson Purchase to Ballard Rural from 1970 through 2002 is \$117,261. (See Exhibit 4, affidavit of Randy Grogan.)

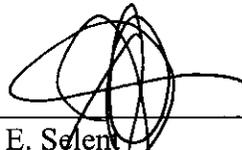
<sup>4</sup> Pursuant to KRS 278.460, utility companies are required to pay six percent interest annually on their customers' deposits. This same rate of interest should apply to the untariffed rates Jackson Purchase collected from Ballard Rural.

<sup>5</sup> Compounded annually, at the simple, annual interest rate of six (6) percent, the total interest on \$122,723 equals \$224,207.39.

**CONCLUSION**

For the reasons set forth above, the Commission should grant Ballard Rural's motion for summary judgment. There are no genuine issues of material fact, only issues of law which are appropriate for resolution upon a motion for summary judgment. Jackson Purchase has offered no rational reason for charging Ballard Rural pole attachment rates in excess of its CTAT rates. Therefore, the Commission should grant Ballard Rural's motion for summary judgment.

Respectfully submitted,



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**COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and accurate copy of the foregoing was served via First Class United States Mail, postage prepaid, to the following individuals this 9<sup>th</sup> day of August, 2004:

W. David Denton  
Walter R. Luttrull III  
Denton & Keuler, LLP  
555 Jefferson Street  
P.O. Box 929  
Paducah, KY 42002-0929

G. Kelly Nuckols  
President & CEO  
Jackson Purchase Energy  
Corporation  
2900 Irvin Cobb Drive  
P.O. Box 4030  
Paducah, KY 42002-4030



**COUNSEL TO BALLARD RURAL  
TELEPHONE COOPERATIVE  
CORPORATION, INC.**

93269v1  
31471-1



Jackson Purchase ECC  
 Entire Territory Served  
 For \_\_\_\_\_  
 Community, Town or City

P.S.C. NO. 7

First Revised \_\_\_\_\_ SHEET NO. 10.0

CANCELLING P.S.C. NO. 6

Original \_\_\_\_\_ SHEET NO. 10.0

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

APPLICABILITY:

In all territory served by the company on poles owned and used by the company for their electric plant.

AVAILABILITY:

To all qualified CATV operators having the right to receive service.

RENTAL CHARGE:

The yearly rental charges shall be as follows:

Two-party pole attachment \$2.27  
 Three-party pole attachment \$1.75

Two-party anchor attachment \$3.10  
 Three-party anchor attachment \$2.07

Grounding Attachment -0-  
 Pedestal Attachment -0-

PUBLIC SERVICE COMMISSION  
 OF KENTUCKY  
 EFFECTIVE

JUN 04 1984

PURSUANT TO KAR 5:011,  
 SECTION 011

BY: *J. Bergman*

BILLING:

Rental charges shall be billed yearly based on the number of pole attachments. The rental charges are net, the gross rate being five percent (5%) higher. In the event the current bill is not paid on or before the date shown on the bill, the gross rates shall apply. Failure of the CATV operator to receive a bill or a correctly calculated bill shall not relieve the CATV operator of its obligation to pay for the service it has received.

SPECIFICATIONS:

A. The attachment to poles covered by this tariff shall at all times conform to the requirements of the National Electrical Safety Code, 1981 Edition, and subsequent

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stifes, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Form for filing Rate Schedules

Jackson Purchase ECC  
For Entire Territory Served  
Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.1

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.1

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)

RATE PER UNIT

revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

B. The strength of poles covered by this agreement shall be sufficient to withstand the transverse and vertical load imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located.

ESTABLISHING POLE USE:

A. Before the CATV operators shall make use of any of the poles of the cooperative under this tariff, they shall notify the Cooperative of their intent in writing and shall comply with the procedures established by the Cooperative. The CATV operator shall furnish the Cooperative detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Cooperative, with the number and character of the attachments to be placed on such poles, and rearrangements of the Cooperative's fixtures and equipment necessary for the attachment, any relocation or replacements of existing poles, and any additional poles that CATV intends to install.

The Cooperative shall, on the basis of such detailed construction plans and drawings, submit to the CATV operators a cost estimate (including overhead and less salvage value of materials) of all changes that may be required in each such pole line. Upon written notice by the CATV operators to the Cooperative that the cost estimate is approved, the Cooperative shall proceed with the necessary changes in pole lines covered by the

PUBLIC SERVICE COMMISSION  
OFFICE OF THE CLERK  
COLUMBIA, MISSOURI

JUN 04 1984

PURSUANT TO KRS 207.003(1)  
SECTION 1

*J. Leogheger*

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Styles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated

Jackson Purchase ECC  
 For Entire Territory Served  
 Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.2

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.2

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)

RATE PER UNIT

cost estimate. Upon completion of all changes, the CATV operators shall have the right hereunder to make attachments in accordance with the terms of the application of this tariff. The CATV operators shall, at their own expense, make attachments in such manner as not to interfere with the service of the Cooperative.

B. Upon completion of all changes, the CATV operators shall pay to the Cooperative the actual cost (including overhead and less salvage value of materials) of making such changes. The obligations of the CATV operators hereunder shall not be limited to amounts shown on estimates made by the Cooperative hereunder. An itemized statement of the actual cost of all such changes shall be submitted by the Cooperative to the CATV operators, in a form mutually agreed upon.

C. Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of pole line attachments hereunder shall be performed by the CATV operators.

D. All poles to which attachments have been made under this tariff shall remain the property of the Cooperative, and any payments made by the CATV operators for changes in pole line under this tariff shall not entitle the CATV operator to the ownership of any of said poles.

E. Any charges necessary for correction of substandard installation made by the CATV operators, where notice of intent had not been requested, shall be filled at a rate equal to twice the charges that would have been imposed if the attachment had been properly authorized.

PUBLIC SERVICE COMMISSION  
 OFFICE OF GENERAL  
 EXECUTIVE  
 JUN 04 1984  
 PURSUANT TO KRS 278.011,  
 SECTION 2 (1)  
 BY: *[Signature]*

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984  
 ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 For Entire Territory Served  
 Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.3

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.3

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE	
CTAT (Cable Television Attachment Tariff) (Con't.)	RATE PER UNIT
<p><u>EASEMENTS AND RIGHTS-OF-WAY:</u>                      A. The Cooperative does not warrant nor assure to the CATV operators any rights-of-way privileges or easements, and if the CATV operators shall at any time be prevented from placing or maintaining its attachments on the Cooperative's poles, no liability on account thereof shall attach to the Cooperative. Each party shall be responsible for obtaining its own easements and rights-of-way.</p> <p><u>MAINTENANCE OF POLES, ATTACHMENTS AND OPERATION:</u>                      A. Whenever right-of-way considerations of public regulations make relocation of a pole, or poles, necessary, such relocation shall be made by the Cooperative at its own expense, except that each party shall bear the cost of transferring its own attachments.                       B. Whenever it is necessary to replace or relocate an attachment, the Cooperative shall, before making such replacement or relocation, give forty-eight (48) hours notice (except in cases of emergency) to the CATV operators, specifying in said notice the time of such proposed replacement or relocation, and the CATV operators shall, at the time so specified transfer its attachments to the new or relocated pole. Should the CATV operators fail to transfer its attachments to the new or relocated pole at the time specified for such transfer of attachments, the Cooperative may elect to do such work and the CATV operators shall pay the Cooperative the cost thereof. In the event the CATV operators fail to transfer its attachments and the Cooperative does such work, the Cooperative shall not be liable for any consequential damages such as loss of service to CATV customers.</p>	
	<p>PUBLIC SERVICE COMMISSION                      OF KENTUCKY                      JUN 14 1984                      PURSUANT TO ORDER NO. 7-1983-11                      SECTION 1                      BY: <i>J. Leofegan</i></p>

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 For Entire Territory Served  
Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.4

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.4

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE	
CTAT (Cable Television Attachment Tariff) (Con't.)	RATE PER UNIT
<p>C. Any existing attachment of CATV which does not conform to the specifications as set out in this tariff hereof shall be brought into conformity therewith as soon as practical. The Cooperative, because of the importance of its service, reserves the right to inspect each new installation of the CATV operator on its poles and in the vicinity of its lines or appurtenances. Such inspection, made or not, shall not operate to relieve the CATV operators of any responsibility, obligations or liability assumed under the tariff.</p> <p>D. The Cooperative reserves to itself, its successor and assigns, the right to maintain its poles and operate its facilities thereon in such manner as will, in its own judgement best enable it to fulfill its own service requirements. The Cooperative shall not be liable to the CATV operators for any interruption of service of CATV operator or for interference with the operation of the cables, wires and appliances of the CATV operators arising in any manner out of the use of the Cooperative's poles hereunder.</p> <p>The Cooperative shall exercise reasonable care to avoid damaging the facilities of the CATV operator, make an immediate report to the CATV operator of the occurrence of any such damage caused by its employees, agents, contractors, and, except for removal for non-payment or for failure to post or maintain the required "Performance Bond", agrees to reimburse the CATV operator for all reasonable cost incurred by the CATV operator for the physical repair of facilities damaged by the negligence of the Cooperative.</p>	<p>PUBLIC SERVICE COMMISSION                  OF KENTUCKY                  JUN 04 1984                  PURSUANT TO PARAGRAPH 11,                  SECTION 1 OF THE                  BY <u>J. Dealy</u></p>

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 For Entire Territory Served  
 Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.5

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.5

JACKSON PURCHASE E.C.C.  
 Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)	RATE PER UNIT
<p><u>INSPECTIONS:</u></p> <p>A. <u>Periodic Inspection:</u> Any unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the last previously required inspection.</p> <p>B. <u>Make-Ready Inspection:</u> Any "make-ready" inspection or "walk-through" inspection required of the Cooperative will be paid for by the CATV operators at a rate equal to the Cooperative's actual expenses, plus appropriate overhead charges.</p> <p><u>INSURANCE OR BOND:</u></p> <p>A. The CATV operator agrees to defend, indemnify and save harmless the Cooperative from any and all damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including but not limited to, costs and expenses of defending against the same and payment of any settlement or judgement therefor, by reason of (a) injuries or deaths to persons, (b) damages to or destruction of properties, (c) pollutions, contaminations of or other adverse effects on the environment or (d) violations of governmental laws, regulations or orders whether suffered directly by the Cooperative itself, or indirectly by reason of claims, demands or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of the CATV operator, its employees, agents or other representatives or from their presence on the premises of the Cooperative, either solely or in concurrence with any alleged joint negligence of the Cooperative. The Cooperative shall be liable for such active negligence.</p>	<p>PUBLIC SERVICE COMMISSION                  KENTUCKY                  JUN 04 1984                  PURSUANT TO 71 KAR 111.010                  SECTION 111.010                  BY: <i>J. Deaghe</i></p>

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 For Entire Territory Served  
 Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.6

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.6

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)	RATE PER UNIT
<p>B. The CATV operators will provide coverage from a company authorized to do business in the Commonwealth of Kentucky:</p> <ol style="list-style-type: none"> <li>1. Protection for its employees to the extent required by Worker's Compensation Law of Kentucky.</li> <li>2. Public liability coverage with separate coverage for each town or city in which the CATV operators operate under this contract to a minimum amount of \$100,000.00 for each person and \$300,000.00 for each accident or personal injury or death, and \$25,000.00 as to the property of any one person, and \$100,000.00 as to any one accident of property damage.</li> </ol> <p>Before beginning operations under this tariff, the CATV operators shall cause to be furnished to the Cooperative a certificate for such coverage evidencing the existence of such coverage. Each policy required hereunder shall contain a contractual endorsement written as follows:</p> <p>"The insurance or bond provided herein shall also be for the benefit of Jackson Purchase Electric Cooperative Corporation, so as to guarantee, within the coverage limits, the performance by the insured of any indemnity agreement set forth in this tariff. This insurance or bond may not be cancelled for any cause without thirty (30) days advance notice being first given to Jackson Purchase Electric Cooperative Corporation."</p> <p><b>CHANGE OF USE PROVISION:</b></p> <p>A. When the Cooperative subsequently requires a change in its poles or attachment for reasons unrelated to CATV operations, the CATV operator shall be given forty-eight</p>	<p>PUBLIC SERVICE COMMISSION                  JUN 04 1984                  BY: <i>J. Seeghara</i></p>

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager

Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 For Entire Territory Served  
 Community, Town or City

P.S.C. NO. 7

First Revised \_\_\_\_\_ SHEET NO. 10.7

CANCELLING P.S.C. NO. 6

Original \_\_\_\_\_ SHEET NO. 10.7

JACKSON PURCHASE E.C.C.  
 Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)	RATE PER UNIT
<p>(48) hours notice of the proposed change (except in case of emergency). If the CATV operator is unable or unwilling to meet the Cooperative's time schedule for such changes, the Cooperative may do the work and charge to CATV operator its reasonable cost for performing the change of CATV attachments.</p> <p><b>ABANDONMENT:</b></p> <p>A. If the Cooperative desires at any time to abandon any pole to which CATV operator has attachments, it shall give the CATV operator notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Cooperative shall have no attachments on such pole, but the CATV operator shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the CATV operator, and the CATV operator shall save harmless the Cooperative from all obligation, liability, damages, cost, expenses, or charges incurred thereafter; and shall pay the Cooperative for such pole an amount equal to the Cooperative's depreciated cost thereof. The Cooperative shall further evidence transfer to the CATV operator of title to the pole by means of a bill of sale.</p> <p>B. The CATV operator may at any time abandon the use of the attached pole by giving due notice thereof in writing to the Cooperative and by removing therefrom any and all attachments it may have thereon. The CATV operator shall in such case pay to the Cooperative the full rental for said pole for the then current billing period.</p> <p><b>RIGHTS OF OTHERS:</b></p> <p>A. Upon notice from the Cooperative to the CATV operator that the use of any pole or poles is forbidden by</p>	<p style="text-align: center;">1</p> <p style="text-align: right;">PUBLIC SERVICE COMMISSION              OFFICE OF THE CLERK              1000 STATE STREET              FRANKFORT, KY 40601</p> <p style="text-align: right;">JUN 10 1984</p> <p style="text-align: right;"><i>J. Geoghegan</i></p>

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 For Entire Territory Served  
 Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.8

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.8

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)

RATE  
PER UNIT

municipal or other public authorities or by property owners, the permit governing the use of such pole or poles shall immediately terminate and the CATV operator shall remove its facilities from the affected pole or poles at once. No refund of any rental will be due on account of any removal resulting from such forbidden use.

PAYMENT OF TAXES:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said attached poles, and the taxes and the assessments which are levied on said property shall be paid by the owner thereof, but any tax fee, or charge levied on the Cooperative's poles solely because of their fee by the CATV operator shall be paid by the CATV operator.

BOND OR DEPOSITOR PERFORMANCE:

A. The CATV operators shall furnish bond or satisfactory evidence of contractual insurance coverage for the purposes hereinafter specified in the amount of Twenty-Five Thousand Dollars (\$25,000.00) until such time as the CATV operator shall occupy twenty-five hundred (2500) poles of the Cooperative and thereafter the amount thereof shall be increased to increments of One Thousand Dollars (\$1,000.00) for each one hundred (100) poles (or fraction thereof) occupied by the CATV operator, evidence of which shall be presented to the Cooperative fifteen (15) days prior to beginning construction. Such bond or insurance shall contain the provision that it shall not be terminated prior to six (6) months after receipt by the Cooperative of written notice of the desire of the Bonding or Insurance Company to terminate such bond or insurance. Upon receipt of such notice, the Cooperative shall request the CATV operator to immediately remove its cables, wires, and all other facilities from all poles of the Cooperative

PUBLIC SERVICE COMMISSION  
 JUN 04 1984  
 PURSUANT TO ORDER OF THE  
 PUBLIC SERVICE COMMISSION  
 David Stiles, Jr.

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Jackson Purchase ECC  
 Entire Territory Served  
 For \_\_\_\_\_  
 Community, Town or City

P.S.C. NO. 7

First Revised \_\_\_\_\_ SHEET NO. 10.9

CANCELLING P.S.C. NO. \_\_\_\_\_ 6

Original \_\_\_\_\_ SHEET NO. 10.9

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)

RATE  
 PER UNIT

If the CATV operator should fail to complete the removal of all its facilities from the poles of the Cooperative within thirty (30) days after receipt of such request from the Cooperative, then the Cooperative shall have the right to remove them at the cost and expense of the CATV operator and without being liable for any damage to the CATV operator's wires, cables, fixtures, or appurtenances. Such bond or insurance shall guarantee the payment of any sums which may become due to the Cooperative for rentals, inspections, or work performed for the benefit of the CATV operator under this tariff, including the removal of attachments upon termination of service by any of its provisions.

B. After the CATV operator has been a customer of the Cooperative and not in default for a period of two years, the Cooperative shall reduce the bond by 50%, or, at the Cooperative's option, require a deposit in keeping with 807 KAR 5:006, Section 7.

USE OF ANCHORS:

The Cooperative reserves the right to prohibit the use of any existing anchors by CATV operator where the strength or conditions of said anchors cannot be readily identified by visual inspection.

DISCONTINUANCE OF SERVICE:

The Cooperative may refuse or discontinue serving an applicant or customer under the conditions set out in 807 KAR 5:006 Sect. 11(1).

PUBLIC SERVICE COMMISSION

OF KENTUCKY

REGULATORY DIVISION

1000 COMMONWEALTH BUILDING

FRANKFORT, KY 40621

JUN 04 1984

PURSUANT TO 807 KAR 011,

SECTION 11(1)

BY *J. Geoghegan*

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_



Form for filing Rate Schedules

Jackson Purchase ECC  
For Entire Territory Served  
Community, Town or City

P.S.C. NO. 7

First Revised SHEET NO. 10.11

CANCELLING P.S.C. NO. 6

Original SHEET NO. 10.11

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)

RATE  
PER UNIT

EXHIBIT B

DEVELOPMENT OF ANNUAL CARRYING CHARGE

Fixed Charges on Investment from PSC Annual Report  
(12-31-82)

- 1. Operation and Maintenance Expense \$1,378,589  
Line No. 53, Page 14
- 2. Customer Accounts Expense 569,871  
Line No. 8, Page 15
- 3. Customer Service and Informational Expense 28,655  
Line No. 14, Page 15
- 4. Administrative and General Expenses 692,098  
Line No. 35, Page 15
- 5. Depreciation Expense 787,256  
Line No. 28, Page 13
- 6. Taxes Other Than Income Taxes 158,554  
Line No. 30, Page 13

Sub-Total \$3,615,023

Divided by Line 2, Page 1 \$28,361,341-12.75%

PUBLIC SERVICE COMMISSION  
OF KENTUCKY

JUN 04 1984

PURSUANT TO ORDER OF THE

SECRETARY

BY: *George Logan*

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated \_\_\_\_\_

Form for filing Rate Schedules

Jackson Purchase ECC  
For Entire Territory Served  
Community, Town or City

P.S.C. NO. 7

Original SHEET NO. 10.12

CANCELLING P.S.C. NO.

JACKSON PURCHASE E.C.C.

Name of Issuing Corporation

SHEET NO.

CORRECTED

CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff) (Con't.)

RATE PER UNIT

7. "Cost of Money" 8.88%

Rate of Return on Investment  
Allowed in the Last General  
Rate Increase, Case No. 8863  
Effective 12/29/83

Annual Carrying Charges 21.63%

Note: All line numbers and page numbers referred to  
above are per the 12/31/82 PSC Annual Report

#1 Represents the actual cost of all 35' and 40' poles  
in plant.

#2 Represents the actual cost of all 40' and 45' poles  
in plant.

#3 The cost of poles in the plant records is the bare  
pole cost with no appurtenances included. Therefore  
the 85% calculation was omitted.

#4 Ground wires are not included as part of the pole  
cost in the plant records.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
REGULATORY

JUN 04 1984

PURSUANT TO SECTION 11,  
SECTION 11

BY *George*

DATE OF ISSUE April 9, 1987 DATE EFFECTIVE June 4, 1984

ISSUED BY David Stiles, Jr. TITLE General Manager  
Name of Officer

Issued by authority of an Order of the PUBLIC SERVICE COMMISSION OF KENTUCKY IN

Case No. 251-41 dated



**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

*In the Matter of:*

<b>BALLARD RURAL TELEPHONE</b>	)	
<b>COOPERATIVE CORPORATION, INC.</b>	)	
<b>Complainant</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2004-00036</b>
	)	
<b>JACKSON PURCHASE RURAL</b>	)	
<b>ELECTRIC COOPERATIVE</b>	)	
<b>CORPORATION</b>	)	
<b>Defendant</b>	)	

**AFFIDAVIT**

Comes the affiant, Harlon Parker, and does depose and state as follows:

1. My name is Harlon Parker. I am the General Manager of Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural").
2. In that capacity I am responsible for the day-to-day business operations of Ballard Rural. I report directly to the Board of Trustees of the cooperative.
3. I have been the General Manager of Ballard Rural for 23 years.
4. Ballard Rural's telephone transmission lines use two feet of space on the utility poles of Jackson Purchase Rural Electric Cooperative Corporation ("Jackson Purchase").





Ballard Rural Telephone Cooperative  
Pole Attachment Payments with Jackson Purchase

	BRTCCI paid JPECCI	JPECCI paid BRTCCI	NET
1954-1969			0.00
1970	1,123.20	79.20	1,044.00
1971			0.00
1972	1,126.40	79.20	1,047.20
1973	2,690.40	127.80	2,562.80
1974	4,248.00	176.00	4,072.00
1975	4,266.00	176.00	4,090.00
1976	4,245.00	176.00	4,069.00
1977	4,245.00	176.00	4,069.00
1978	4,245.00	176.00	4,069.00
1979	4,227.00	176.00	4,051.00
1980	4,239.00	176.00	4,063.00
1981	4,248.00	176.00	4,072.00
1982	4,236.00	176.00	4,060.00
1983	4,236.00	176.00	4,060.00
1984	4,236.00	176.00	4,060.00
1985	4,236.00	176.00	4,060.00
1986			0.00
1987	4,233.00	180.00	4,053.00
1988	4,280.00	180.00	4,080.00
*1989	4,233.00	180.00	4,053.00
1990			0.00
1991	4,293.00	180.00	4,113.00
1992	4,293.00	184.00	4,109.00
1993	4,302.00	184.00	4,118.00
1994	4,287.00	184.00	4,103.00
1995	4,287.00	184.00	4,103.00
1996	4,392.00	184.00	4,208.00
1997	4,392.00	184.00	4,208.00
1998			0.00
1999	4,641.00	184.00	4,457.00
2000	4,662.00	188.00	4,474.00
2001	4,719.00	188.00	4,531.00
2002	9,882.00	680.00	9,202.00
TOTALS	122,723.00	5,462.00	117,261.00



**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

*In the Matter of:*

<b>BALLARD RURAL TELEPHONE</b>	)	
<b>COOPERATIVE CORPORATION, INC.</b>	)	
<b>Complainant</b>	)	
	)	
v.	)	<b>Case No. 2004-00036</b>
	)	
<b>JACKSON PURCHASE RURAL</b>	)	
<b>ELECTRIC COOPERATIVE</b>	)	
<b>CORPORATION</b>	)	
<b>Defendant</b>	)	

**AFFIDAVIT**

Comes the affiant, Randy Grogan, and does depose and state as follows:

1. My name is Randy Grogan.
2. I am the Controller of Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"). My duties and responsibilities as the Controller of Ballard Rural are to account for and manage all monies received by Ballard Rural and paid by Ballard Rural to third party vendors. I am also responsible for assisting the company in monitoring its financial health.
3. I compiled Exhibit 3 to Ballard Rural's Reply in Support of its Motion for Summary Judgment. I prepared Exhibit 3 on the basis of records kept in the ordinary course of Ballard Rural's regularly conducted business. I am the custodian of those records.
4. Exhibit 3 is true and accurate to the best of my knowledge.

**FURTHER AFFIANT SAYETH NOT.**

\_\_\_\_\_  
Randy Grogan

COMMONWEALTH OF KENTUCKY    )  
  ) SS  
COUNTY OF BALLARD            )

SUBSCRIBED AND SWORN to before me a notary public by Randy Grogan, to me known, this \_\_ day of August, 2004.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State at Large